App.F.IX-4]

1924-5

File No. 1-24.

Previous References. (J.T)

Serial Nos. 5-8

Later refer ences.

GENERAL & REVENUE SECRETARIAT

Serial Nos. 4.

Part B for August 1925.

SUBJECT

Assessment to incometax of General Assurance Society. Ltd. Ajmer.

Pol 125/ J.T. 1-24-8 & 10.8.25

Stating that the order of assessment made on the Company is a legal one under the provisions of the Mysore J.T. Regulation etc

To Secy: to the Hon'ble the Resident

G. R. S. 11] 1924

GENERAL AND REVENUE SECRETARIAT.

(Income Tax

NOTES.

File No. 1-24

FILE HEADING.

Assessment of General Assurance Society, Ltd, Ajmere, to Mysore Income Tax.

From

The Secretary to the Resident

No. 8968 Dated 13.11.24 Received in Branch 18.11.24

Diary No. 1791	Enclos. - Spare Copies. -	Serial No. 5

BRIEF ABSTRACT OF LETTER.

Points out that the assessment of the General Assurance Society to mysore income-tax is not in accordance with the provisions of the Mysore I.T. Rules & requests to that the views of the Mysore Govt on the subject in the light of the points raised may be intimated for communication to the Govt. of India

NOTES AND ORDERS.

T

1 The facts of the case are contained in I.T. file 1924 put up.

2 The main contention of the Govt. of India is that the amounts which neither accrue, arisenor are received in Mysore shall

G. R S. 11] 1924

GENERAL AND REVENUE SECRETARIAT.

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NOTES—First Sheet.

Serial No.

be taken into account in computing the total profits of a company doing business partly in Mysore & partly in British India.

3 The sections of the I.T. Reg^n which have a bearing on the present case are Sections 4(1), 10(4) & 16(1). The first viz Section 4 is the charging section & according to that "incomes that accrue arise or are received in Mysore are to be taxed." The other sections, it is stated, have to be read with this, as it is the charging section that fixes the liability to tax. ~~Accordingly~~ Section 10(4) authorises a deduction from the amount of income, profits or gains appearing to the assessing officer to be due to the transactions in British India in the case of companies whose income accrues & arises in British India but also is taxable in Mysore owing to the fact that it is deemed to accrue or arise in Mysore or has been received in Mysore. No deduction therefore is to be allowed in the case of the Ajmere Company, as the profits which accrued in British India were not received in Mysore. Section 16(1) has no application to the present case & cannot be held to impose any taxation on any income which would not otherwise be liable to tax.

NOTE—Contn. Sheet

Serial No.

4 On the other hand, the view adopted by us is quite the contrary.

5 Section 16(1) of the Mysore Income Tax Reg^n differs materially from Section 16(1) of the British Indian Act & according to the wording in our Reg^n, "in computing the total income of an assessee carrying on business partly in British India & partly in Mysore the profits or gains in British India are to be included; i.e. the all India income is the total income for purposes of calculation of income tax. That this was not the intention is clear from the following words of the 1st member at the time of introducing the I T Bill in the Legislature council.

The present law is not clear as to the rate at which the income of firms doing business both in Br. India & in Mysore should be taxed. The Bill lays down definitely that while in computing the profits of such a business a deduction should be allowed of the amount of profits accruing from the transactions in Br. India, the total income for purposes of determining the rate should include such profits." (Para 7-8 of the Mysore Gazette Supplement of 31.5.23)

Submd. for orders -

KW 20/11. 6 Attention is invited to the L.L.Sec's opinion in regard to the interpretation of Section 16 in connection with the assessment of the Sholapur Weaving Company & the Oriental

JT

NOTE—Contn. Sheet

Serial No.

7

Life Assurance Company to Super-tax (copy put up).

The L.L. Secy may perhaps be consulted again in view of what is mentioned in the present Residency Communication.

WF 25/11/21 8 A draft reply to the Residency letter has been put up fully discussing the position with reference to the provisions of the Mysore Income Tax Act and the reciprocal arrangements in force between the Govts of India and Mysore to avoid double taxation. The draft is self-explanatory and is for convenience of reference the provisions of the Act have been referred to in the draft and the application of the various Sections to the case under disposal suitably discussed. The draft may if approved be referred to the L. Secy also for comments as regards the tenability of the legal position mentioned in it. There is nothing in the provisions of the Act which disputes the correctness of the interpretation put upon the agreement arrived at between the Govt of India and the Mysore Darbar as stated at the end of para 3 of the Residency letter under reference. This has also been pointed out in the draft reply. As indicated in the draft it is the Govt of India that

NOTE—Contn. Sheet

that will contribute to this receipt by its refusal to meet its obligation to pay refunds of ~~income~~ Mysore income tax levied on profits earned in Mysore on which a higher rate of tax according to British Indian rates has already been levied and on which therefore the Govt of India makes a profit even after the refund equal to the difference between the ~~two~~ taxes according to the Mysore & British Indian rates. The Govt of Mysore have as much claim to Mysore income, whatever be its amount, earned by British assessees carrying on business both in Mysore & British India as the Govt of India have to the whole income of such assessees including the income attributable to business carried on in Mysore.

Serial No.

11 The point taken in the last para of the draft reply is that already stated in the case of the Mysore Messrs Sons & Company which under the orders of the Dewan. The question of subjecting the Mysore Govt to the possible defence and liability to submit returns on matters of internal revenue is regarded to be resisted

Rev Secy. 24/12/26

General and Revenue Secretariat.

IT File No. 6/1791 of 1924

Serial No.

The question is not the form clear
The case for the Mysore Govt is
clearly stated in the letter of
the Asst Comr of I T & the Dy Comr
of Income Tax in Rc 1 of 1924 —
placed below. The opposite view — which
is taken by the Govt of India
is clearly set forth in the
under reference. The whole Govt
depends on what is the scope of
Sec 4, Cl 1. The L. L. Secy may be
consulted

13 11. M.

663
27.12.24

14 (A) I agree

15 The matter may be treated
as urgent.

IMMEDIATE

L. L. Secy

16 The draft letter seems to have been
drawn in accordance
with my opinion given in the Oriental Life
Assurance Co case. I have made a slight
correction in the draft. This might be
approved. There is no reason to change my
opinion.

Rec'd
with Compts

DEWAN'S OFFICE.
RECD. ON 27 FEB. 1925
Regd. No. 6305

6861
25/2

353
17/4

15 May 17/4

11 May 18

Approved
Subject to Rules

NOTE—Contn. Sheet.

(7) C98 Revenue

General and Revenue Secretariat.

9T File No. 1 of 1926

Serial No.	
6,25	NO: Pol: 822 dt 30.3.26: I, The Secy: to the Resid informs him the position held by the Mysore Government in regard to the assess- ment of the General Assurance Society Ltd Agency to Mysore Income-tax.
7.	NO: Pol: 9386 dt 4.6.26: From, The Secy: to the Resident informing him that in the circumstance explained by him, the Subject of obtaining the Company's undertaking to the effect may be abandoned.
	8/ Subject to receipt of the opinion which may be received from the Legal Adviser to the Government of India, the views now expressed by the Resident may be adopted.
	9/ [illegible]
	10/ [illegible]
	11/ [illegible]
	12/ [illegible]
	13/ [illegible]
	14/ [illegible]
	15/ [illegible]
	16/ [illegible]

10012/15/6

Sheet

G.R.S. III-2]

WD 2119—GPB—10.000—27-4-25

File No. 5344/P/24 (8) 1895 of 1924

General and Revenue Secretariat.

Serial No.

Further, 2 final points raised in the Resy Letter are already dealt with in the letter of 30-3-25

See 2 letters Sec/16

2. The point has already been clearly explained by the Ltd Secy in the letter of 30-3-25 to the Residency. The Residency apparently not included to agree in this view. It is only a question of interpretation & our Sec 16 (1) is different from the corresponding Sec in the Br India Act. The best course is that pointed out by the Secd Member. The interpretation to be adopted is before the Chief Court whose decision may be awaited; it is not for the Executive to interpret laws, nor for the Residency to suggest any particular interpretation. The Courts will not be bound by any interpretation of the kind. Upon the Chief Court decision in any case, the Residency Govt probably will drop the question if they do not, it will be time enough to consider whether any amendment of the law may be necessary.

(Ltd Secy)

C/1/2101

107

Cag 1.7.25

I respectfully agree with the last two paras

This belongs to Secretariat & should be sent here for further action. Cag 6.7

2. Please put up a note at 8/7

6/7

NOTE—Contn. Sheet

165/2 (9)

G. R. S. III-2]

General and Revenue Secretariat. | 9T File No. 1 of 1924

Serial No. 29

Draft Subd

W 14/7 30 Draft portion has been revised discussing the points raised in the Residency letter under disposal. This is for Cambodia. The identical question involved in this case has not been referred to the Chief Court but it is only the question of assessing income Import tax of the persons or firms of Cambodia whose income is less than Rs 50,000 but whose total income including British India income exceeds Rs 50,000 that has been referred to the Chief Court.

A typed copy of the draft will be put up after approval.

774/25/7

Rev Secy) 31 Yes, may issue 15/7/25

Today = 32 with spacing

20/7 Typed draft portion put up. 18/7.

Rev Secy) 33 Draft is considered may issue 20/7/25

NOTE—Contn. sheet.

34 Mean time a clean draft may be revised in accordance with the decision of Govt before issue

The case will be referred to the Chief Court 27-7

11 May

G. R. S. III-2]

General and Revenue Secretariat.

J.T File No. 1 of 1924

DEWAN'S OFFICE.
RECD. ON 3 AUG. 1925
Reg. No. 1645

Serial No. 36 –

Subd. with a clean copy of the draft as perused, for submission to Diwan.
WW36 28/7 The draft would appear to require Some slight alteration as the party Cannot ~~superintend~~ apply to refer the Case to the Chief Court after the lapse of the period of one months of the passing of the order by the J.T. Court (Vide Section 66 (2) Revision)

28-7-25

37 For want of a change Suggested

29/7

38 Pleas submit before Appd by Diwan issue.

1/8/25

Diwan 39 Ack 1/8 3/8

40 Appd Issue & submit to 2nd member for perusal of Diwans orders

1/8

* Revision of para 2 is suggested for appl: disposed of by Govt

907 30/7

NOTE—Contn. sheet.

165 (11)

[App. F. III—2

General Revenue Secretariat | G. T File No. 1 of 1924

Serial No 8

To.

The Secy to the Hon'ble the Resident
no. 1281/25 dt 10.8.25

States that the assessment made is a legal one under the provisions of the G.T. Regn & that as the question involved is purely one of interpretation, it was open to the assessee to take action under Section 66 of the Regn for obtaining a ruling of the Chief Court.

The file may be submd. to the 2nd member for perusal of the Dewan's orders.

1281/11-8 Gen B.

WWJ 11/8 2nd member

mab 11/8/25

Seen
Lee
12/8/25

12/8/25

Sheet

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

Pol. No. 583. No. 8968 43-1917. ENC.

DIARY NO. 1791

19 — 19

Letter. No.

FROM

A. N. L. Cater, Esq., I.C.S.,

SECRETARY TO THE RESIDENT IN MYSORE.

J.T. 1-24-5

To

The Secretary to the Government of Mysore,

Revenue Department.

Dated Bangalore, 13th November *1924*.

Subject.

ASSESSMENT OF GENERAL ASSURANCE SOCIETY LIMITED, AJMER TO MYSORE INCOME-TAX.

SIR,

In reply to your letter No. Pol.272, dated the 18th September 1924, I am directed to point out that it does not appear to the Government of India, as they understand the facts, that the assessment of the General Assurance Society, Limited, jmer, to Mysore income-tax is in accordance with the provisions of the Mysore Income-tax Regulation, 1923.

2. The Government understand that the total income of the company accruing, arising or received in Mysore for the year 1922-23 was only Rs.1,664/- which, as the Mysore Government point out, is less than the taxable minimum of Rs.2,400/-. That being the case, the company was not liable at all to Mysore income-tax. Section 16(1) of the Mysore Regulation to which reference is made provides that "in computing the total income of an assessee . . . . profits or gains in British India of any business carried on both in British India and in Mysore in respect of which deduction is allowed under section 10, sub-section (4), shall be included". This section obviously has to be read subject to the clear provisions of section 4(1)

of

of the Regulation under which all that can be taxed in Mysore is "income, profits or gains as described or comprised in section 6 from whatever source derived, accruing or arising or received in Mysore, or deemed under the provisions of this Regulation to accrue, or arise, or to be received in Mysore".

3. The income of the company earned in British India does not accrue or arise in Mysore. Neither apparently was it received in Mysore, neither can it be deemed under any of the provisions of the Regulation to accrue or arise or to have been received in Mysore. Section 10(4) of the Regulation which says that "in computing the profits or gains of a business which has its headquarters in Mysore but has branches also in British India, or which is carried on partly in Mysore and partly in British India, a deduction shall be allowed of the amount of profits or gains appearing to the assessing officer to be due to the transactions in British India" can only apply to income accruing or arising in British India but also taxable in Mysore owing to the fact that it is deemed to accrue or arise in Mysore or has been received in Mysore. Consequently, section 16(1) of the Regulation which has ~~been~~ already been quoted has no application to the present case. The Government of India state that on previous occasions the same or a similar mistake appears to have been made by the Mysore income-tax authorities, and the matter is of some importance to them because this interpretation of the Mysore Regulation leads to claims to refunds of income-tax in British India on account of income-tax levied in Mysore apparently by mistake. It is true that the income-tax authorities in British India are under no obligation to grant a refund in excess of such sum as they consider to have been legally leviable under the Mysore Regulation, irrespective of the amount actually levied in Mysore On the other hand, the refusal of a refund in British India will not unnaturally create a sense of hardship in the mind of the assessee concerned and the levy of income-tax in Mysore in such cases defeats the object of the agreement arrived at between the Government of India and the Mysore Darbar.

4. I am therefore to request that the Hon'ble the Resident may be favoured at an early date with the views of the Government of Mysore on the subject for communication to the Government of India.

I have the honour to be,

Sir,

Your most obedient servant,

SECRETARY TO THE RESIDENT.

BJ

Pol. 822 & 30 3/25

To

The Secretary to the

Hon'ble the Resident in Mysore.

G.T.V-246

Subject :- Assessment of the General Assurance Society Limited, Ajmere to Mysore Income Tax.

Sir,

With reference to your letter No.8968/43-1917 of the 13th November 1924, I am directed to state that the Government of His Highness regret their inability to understand the grounds on which the assessment referred to above is not considered by the Government of India to be in accordance with the provisions of the Mysore Income Tax Regulation 1923. The position held by the Mysore Government may be briefly explained to be as follows :-

As has already been pointed out in my letter of 18th September 1924 the income of the Company in Mysore for the year 1922-23, though less than the minimum limit of Rs.2400, was assessed to Mysore Income tax under section 16(1) of the Mysore Income Tax Regulation. This is in accordance with the principles of the Income-Tax law and the provisions of the Mysore Income Tax Regulation under which it is the "Total Income" of an assessee that determines his liability to income tax and also the rate at which tax has to be paid

P.T.O.

by him. It is on the basis of this -- Total Income that the principal officer of every Company has to submit a - return under Section 22 of the Regulation in the form prescribed in Rule 18 of the Rules under the Income-Tax Regulation. According to Section 2 clause (15) - Total Income means-the total amount of - income, profits and gains from all sources to which the Regulation applies computed in the manner laid down in Section 16(1) of the Regulation; and Section 16(1) enumerates the exemptions and exclusions to be made in determining the total income of an assessee, in which is included the "profits and gains in - British India of any business carried on both in British India and in Mysore in respect of which deduction is allowed under Section 10(4)". It is thus clear that, for the purposes of the Income Tax Regulation, a computation has to be made of the total income of an assessee in the manner provided in Section 16 and the assessable income, which is quite distinct from Total income, worked out after allowing the deductions authorised in the Regulation.

3. In the case of the Ajmere General Assurance Society Ltd., the total income has been computed for fixing the liability to tax, ~~has been computed~~ by including in it the portion of the profits or gains arising ~~out~~ in British India, but the latter has been excluded in ~~of Mysore, but for~~ by excluding determining the amount actually assessable to tax ~~the portion of the profits or gains arising out of Mysore has been excluded as~~ required by Section 4(1). The procedure adopted is ~~this~~ strictly in accordance with the provisions of the Regulation contained in Sections 2(15), 4(2), 16(1),

4 22(1), ~~and 23(1)~~). ~~As~~ The application of Section 4 of the Regulation cannot be restricted, only to profits or gains actually arising or received in Mysore, and it is quite clear from the last portion of section 4(1) that it has also to be extended to the case of incomes "deemed under the provisions of this Regulation to accrue, arise or to be received in Mysore" ~~No question arises that~~ the assessment made in this case is not for inconsistent with the provisions of section 4(1) of the Regulation to which reference is made in para 2 of your letter under reply. Section 16(1) is one of the provisions in the Regulation under which it is necessary to "deem" that the income of a Company carrying on business both in Mysore and British India is income derived in Mysore for the purpose of determining the liability of the Company to tax and the rate at which it has to be levied under the Mysore Income Tax Regulation ~~and it is therefore difficult~~.

"the application of this Section is subject to the provisions hereinafter contained, for the words 'the 4' save as hereinafter provided, this Regulation shall apply to all income, ..."

7 In the circumstances stated above, the Mysore Government consider that there is no mistake in assessing portion of the income of the Company actually received in Mysore to Mysore income tax at the scheduled rate for its aggregate income inclusive of its profits in British India, and the Company can have no grievance in the matter.

5. As for the claim to refunds of income-tax in British India on account of the levy of Mysore Income tax in such cases, to which allusion is made in para 3 of your letter,

I am to state that, should there be any double levy on the portion of the income derived by the Company in Mysore, the Company is, in all fairness to it, entitled to a refund from British India of the Mysore tax paid by it under the reciprocal arrangements in force between the Governments of India and Mysore for the purpose of avoiding double taxation; and it is difficult to see how the claim can be refused as stated in your letter. When the income in respect of which refund is claimed is that which actually arose in Mysore and in respect of which there is an arrangement to prevent parties being subjected to double levy, and when the refund to be given to the Company is also less than the amount of tax actually levied on that portion of the income in British India (Mysore rates being less than the British Indian rates for the same classes of income), the refusal of a refund in British India will, no doubt, create a sense of hardship in the mind of the assessee as stated in your letter, but it is difficult to see how Mysore is responsible for it. That portion of the Company's profits attributable to its business in Mysore is less than the taxable limit of Rs.2,400 cannot, ipso facto alter the nature of the income and subject it to British Indian tax without the inherent right under the Reciprocal Arrangement of the claim for refund of the tax actually paid by the assessee to the Mysore Government. The Mysore Government are confident that there is no intention on the part of the Government of India to resist a claim for the refund of a tax which, under the reciprocal arrangements referred to in your letter -

is always recovered in the first instance - in British India subject to claims for - refunds of the kind under advertance when presented -

6. I am, in these circumstances, to request you to place these aspects of the ~~question~~ Case before the Government of India and to - request them to reconsider their decision. I am also to invite reference to the request contained in this office communication No. 1857 dated 15.3.24 that in matters of the - kind, the parties may be required, if they - have any grievance against assessments to Mysore Income Tax, to seek the redress made - amply available to them in Mysore ~~under~~ the Mysore Income Tax Regulation and not to - encourage the ~~parties~~ to complain to the - Government of India giving rise to correspondence of the kind now being carried on.

Flag G.

The remarks are omitted

I have the honour to be,

Sir,

Your most obedient servant

Secretary to Government,
Revenue Department.

24/12

MK.

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

X 4822

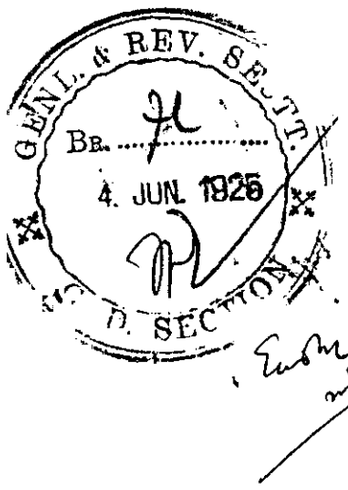
No. 4657 ENC.
43-1917.

C 98

FROM

Major K. A. G. Evans Gordon,

SECRETARY TO THE RESIDENT IN MYSORE.



Pol 1386

To

The Secretary to the Government of Mysore,

Revenue Department.

Dated Bangalore, 4th June *1925.*

Subject.

Assessment of General Assurance Society, Ltd., Ajmer, to Mysore income-tax.

I.T. 1-24-7

SIR,

I am directed to refer to your letter No. Pol.822/I.T.1-24, dated the 30th March 1925 regarding the assessment of the General Assurance Society, Ajmer, to Mysore income-tax, and to say that in the opinion of the Resident the Mysore Government do not appear to have met the arguments of the Government of India conveyed in Mr. Cater's letter No.8968/43-1917, dated the 13th November 1924.

2. It is no doubt true that it is the total income of an assessee that determines his liability to income-tax but the expression "total income" is defined in section 2 (15) of the Mysore Income Tax Regulation as "total amount of income, profits and gains from all sources to which this Regulation applies computed in the manner laid down in Section 16". This shows that, unless the Regulation applies to a particular income, that income cannot be included in computing the "total income" of an assessee. According to section 4, the Regulation applies, however, only to incomes, profits or gains accruing or arising or received in Mysore or deemed under the provisions of the Regulation (Vide Section 11 (3) and 42) to accrue, or

arise

arise, or to be received in Mysore. In other words, unless an income accrues or arises or is received in Mysore, or is deemed under the Regulation to accrue or arise or to be received in Mysore, the Regulation cannot apply to it. It may be observed in this connection that the opening words in sub-section (1) of section 4 viz. "save as here-in-after provided" are really intended to limit and not to extend the operation of that sub-section; and there appears to be no doubt that section 16 (1) to which reference has been made has to be read subject to the clear provisions of section 4(1).

3. It is agreed that, as stated in your letter under reference the applicability of section 4 of the Regulation cannot be restricted to incomes actually arising or received in Mysore but extends to the case of incomes deemed under the provisions of the Regulation to accrue arise, or to be received in Mysore, but evidently it cannot go further. In the present case, the company has its head office in British India, and the income earned by it in British India did not accrue, or arise nor was it received in Mysore, and neither could it be deemed under any specific provisions of the Regulation to have accrued or arisen or to have been received in Mysore; and apart from any actual provisions of the Regulation, it is at least doubtful whether the Mysore Government could by legislation affect the income of a firm whose head office is outside the State, unless that income accrues within the State. In these circumstances I am to express the hope that the Mysore Government will reconsider their position.

4. With reference to the concluding paragraph of your letter, I am to state that ordinarily it is immaterial to a company in British India whether it is assessed in Mysore or in British India on incomes like the one now in question. If it is assessed both in Mysore and British India, the Government of India will be applied to for a refund, though they are not really bound to give it

if

if the Mysore tax is not legal; and it is evidently with a view to avoiding the refusal of such applications that the Government of India desire to settle the question amicably with the Mysore Government.

I have the honour to be

Sir,

Your most obedient servant.

for SECRETARY TO THE RESIDENT.

BJ

Rol 125

10th August 1925

G.T. 1-24-8

To

The Secretary to the Hon'ble
the Resident in Mysore, Bangalore.

Assessment of General Assurance Co., Ajmere, to Mysore Income Tax.

S i r,

With reference to your letter No. 4657 dated the 4th June 1925 on the above mentioned subject, I am directed to state that the Government of Mysore, after --- giving their best consideration to the matter, are of opinion that the assessment is a legal one under the provisions of the Mysore Income Tax Regulation.

2. As the question involved is purely one of interpretation of law, the assessee, ~~it is suggested, may kindly be asked~~ to take action under Section 66 of the Mysore -- Income Tax Regulation for obtaining a ruling of the Mysore Chief Court in the matter. The case is kept open as regards future assessments.

I have etc.,

Secy: to Govt,
Rev: Deptt.

K.M.R.